

**Summary of Changes to the
Minnesota Sentencing Guidelines and Commentary**

August, 1991

The following changes have been made to the Minnesota Sentencing Guidelines and Commentary and will be incorporated in the upcoming publication of the Minnesota Sentencing Guidelines and Commentary, Revised August 1, 1991. Some of the changes come from the recent adoption of modifications at the July 30, 1991 commission meeting but others were changes adopted at earlier times. Some of the changes are clerical corrections and other types of housekeeping changes. This summary should help reduce confusion over the total number of changes made to the guidelines over the past year. These changes became effective August 1, 1991 unless otherwise noted.

1)**II.A.03**, the listing for Hazardous Wastes contained a second cite that had recently been repealed by the legislature. This cite was removed.

15. Hazardous wastes - 609.671; ~~115.071, subd. 2(2)~~

2)Aggravating factors 7 & 8 were removed from the guidelines as the elements of these aggravating factors were incorporated into individual felony crimes by the 1991 Legislature.

~~————— (7)The offender committed a crime against the person in furtherance of criminal activity by an organized gang. An "organized gang" is defined as an association of five or more persons, with an established hierarchy, formed to encourage gang members to perpetrate crimes or to provide support to gang members who do commit crimes.~~

~~————— (8)The offender was convicted of a controlled substance offense in violation of chapter 152 and the offense was committed in a park zone or in a school zone as defined in chapter 152.01.~~

~~————— This aggravating factor shall not apply to an offender convicted of unlawfully possessing controlled substances in a private residence located within a school zone or a park zone if no person under the age of 18 was present in the residence when the offense was committed.~~

~~————— This aggravating factor shall not apply to an offender convicted under chapter 152.022, subdivision 1, clause (5), (ii) or under chapter 152.023, subdivision 2, clause (5).~~

3)**II.D.205** is new language to clarify that the former aggravating factor for gang related criminal activity can no longer be used as a reason for departure from the presumptive sentence.

Gang related criminal activity is now a separate crime under Minn. Stat. § 609.229 and can no longer be used as a reason for departure from the presumptive sentence. See Section **G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers** for the presumptive sentence for persons convicted of Crime Committed for Benefit of a Gang, Minn. Stat. § 609.229, subd. 3 (a).

4)A new paragraph was added to the guidelines at the end of section E. Mandatory Sentences (just before

the commentary language) to clarify a new mandatory minimum provision passed by the 1991 Legislature.

When an offender has been sentenced according to Minn. Stat. § 609.11, subd. 5a the presumptive duration of the prison sentence is the mandatory minimum term for dangerous weapon involvement plus the mandatory minimum term for the second or subsequent controlled substance offense or the duration of prison sentence provided in the appropriate cell of the Sentencing Guidelines Grid, whichever is longer.

5) **II.E.02**, new language was added to the end of this comment to clarify that the Commission interprets mandatory minimum sentences of less than one year and one day to mean any incarceration, including time spent in local confinement as a condition of a stayed sentence. This language was adopted and effective December 21, 1990.

When the mandatory minimum sentence is for less than one year and one day, the Commission interprets the minimum to mean any incarceration including time spent in local confinement as a condition of a stayed sentence. The presumptive disposition would not be commitment to the Commissioner unless the case falls below the dispositional line on the Sentencing Guidelines Grid. An example would be a conviction for simple possession of cocaine, a Fifth Degree Controlled Substance Crime. If the person has previously been convicted of a controlled substance crime, the mandatory minimum law would require at least six months incarceration which could be served in a local jail or workhouse.

6) The title of section G. was changed to G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers.

7) New language was added to section G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers, to describe the appropriate presumptive sentence for "Solicitation of Juveniles" and for "Crime Committed for Benefit of Gang."

For persons convicted of attempted offenses or conspiracies to commit an offense or for persons convicted of Solicitation of Juveniles under Minn. Stat. § 609.494, subd. 2(b), the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the completed or intended offense, and dividing the duration contained therein by two, but such sentence shall not be less than one year and one day . . .

For persons convicted of Minn. Stat. § 609.229, subd. 3 (a) where there is a sentence for an offense committed for the benefit of a gang, the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the underlying crime with the highest severity level, and the duration contained therein plus an additional 12 months.

- 8) Severity Level VI - Subdivision 7 was added to Controlled Substance Crime in the Third Degree. The inaccurate listing of Malicious Punishment of a Child (great bodily harm) was removed.
- 9) Severity Level IV - The inaccurate listing of Receiving Stolen Property (firearm) was removed.
- 10) Severity Level III - Added the offenses of Firearm Silencer (public housing, school, or park zone) and Hinder Logging (great bodily harm). Moved Receiving Stolen Property (firearm) to its correct listing at severity level III.
- 11) Severity Level II - Added three new crimes: Discharge of Firearm (public housing, school, or park zone), Duty to Render Aid (death or great bodily harm), and Furnishing a Dangerous Weapon. Also, the offense of Furnishing Firearm to Minor was increased from severity level I.
- 12) Severity Level I - Added subdivision 2 to Assault 4, and added two new crimes: Crime Committed for Benefit of Gang (609.229, subd. 3(c)) and Duty to Render Aid (substantial bodily harm). Also, the cite for Discharge of Firearm was changed to reflect 1991 law.
- 13) Misdemeanor and Gross Misdemeanor Offense List - Added the offense of Contraband Articles Forbidden (Jail/Lock-up/Correctional Facility) and corrected the cite for Possession of Small Amount of Marijuana in Motor Vehicle.
- 14) Numerous changes were made in the Numerical Reference of Felony Statutes to reference the appropriate changes made to statutory cites and new rankings.
- 15) An INDEX was added to the back of the guidelines to assist criminal justice professionals in finding the appropriate reference to guideline policy.